

Minnesota Housing Finance Agency

**SUPPLEMENT TO GENERAL CONDITIONS OF THE
AGREEMENT BETWEEN OWNER AND CONTRACTOR**

This SUPPLEMENT TO GENERAL CONDITIONS OF THE AGREEMENT BETWEEN OWNER AND CONTRACTOR (the "MHFA Supplement") is made and entered into as of the _____ day of _____, 20____, between _____, a _____ ("Owner"), and _____, a _____ ("Contractor"), as an inducement to the Minnesota Housing Finance Agency ("MHFA") to enter into a HUD-Risk Sharing Program Building Loan Agreement with Owner of even date herewith (the "Building Loan Agreement") pursuant to which MHFA will loan funds (collectively, the "MHFA Loan") secured by certain mortgage notes and mortgages, all of even date herewith (the "MHFA Loan Documents"). Owner will use the proceeds of the MHFA Loan to finance construction and/or rehabilitation of certain improvements on real estate located in _____ County, Minnesota (the "Project"). Owner and Contractor agree that the following provisions shall govern the agreements between Owner and Contractor notwithstanding any contrary provision in the Contract Documents, as defined in Article 1 of AIA Document A101 (1997) and any other supplements or other modifications thereto. This MHFA Supplement is a modification of the Contract Documents, and Owner and Contractor agree that to the extent this MHFA Supplement is inconsistent with any other modification, this MHFA Supplement shall control over the other modifications. Any capitalized terms not defined herein shall have the meanings set forth in AIA Document A101 or AIA Document A201. No term defined in the Contract Documents or this MHFA Supplement may have the definition modified without the express written consent of MHFA.

**ARTICLE I
GENERAL PROVISIONS**

1.01. Contractor acknowledges that it has been provided with a copy of the Building Loan Agreement and has reviewed the provisions thereof. Contractor further acknowledges that MHFA is a third party beneficiary of the Contract Documents and has made loans under the Building Loan Agreement for which the Project is the primary source of collateral. The obligations of MHFA under the Building Loan Agreement are contingent upon and subject to the acceptance by MHFA of the Building Loan Agreement as well as the MHFA Loan Documents executed pursuant thereto. If for any reason whatsoever the Building Loan Agreement or the MHFA Loan Documents are not executed, delivered, and recorded, this MHFA Supplement shall be void and of no effect.

1.02. All changes in the plans or specifications prepared in connection with the construction and/or rehabilitation of the Project, which are set forth in **Exhibit A** attached hereto,

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or changes to any terms of the Contract Documents, or orders for extra Work, or changes by altering or adding to the Work shall be made only following completion of a written Change Order executed by Owner, the Architect, if any, and Contractor (except for MHFA's correction orders, if any, as provided below) and after the Change Order has been submitted to and placed on file with MHFA. Any changes in the Contract Documents for extra Work, or changes by altering or adding to or eliminating any of the Work that will result in any net construction cost increase or decrease, or will change the design concept, or may result in changes to the date of Substantial Completion or Final Completion may be effected only with the prior written approval of MHFA. MHFA shall make available a qualified officer authorized to review and approve requests for such changes, additions or alterations during normal working hours. Approval of MHFA of such changes shall not be unreasonably withheld.

1.03. When, at any time during the construction of the Project, in the sole opinion of MHFA, Contractor has failed to perform the Work under the Contract Documents in accordance with the Contract Documents or has failed to utilize materials in accordance with the Contract Documents, MHFA may issue a correction order to Contractor for the correction of such conditions, which order shall not require the approval of Owner. Neither the Contract Sum nor date of Substantial Completion shall be changed as a result of correction orders by MHFA.

1.04. MHFA and its authorized agents shall have the right of entry and free access during normal business hours to the Project and any other location or locations where materials, equipment, or fixtures intended for use in connection with the Work may be stored pending such use and shall have the right to inspect all Work done and materials, equipment and fixtures furnished, installed, or stored in and about the Project. For such purposes, Contractor shall furnish such temporary facilities as is customarily furnished to inspecting architects and shall make available the Contract Documents at the Project site.

1.05. In addition to and not by way of limitation of any other warranties existing by law or statute or otherwise provided in the Contract Documents, Contractor hereby agrees to correct any defects due to faulty materials or workmanship that exist within 1 year from the date of Substantial Completion, at no expense to Owner.

1.06. Contractor agrees to indemnify, defend and save harmless the State of Minnesota and MHFA, its directors, officers and employees, against loss or expense by reason of the liability imposed by law upon Contractor, the State of Minnesota or MHFA for damages because of bodily injuries, including death at any time resulting therefrom, accidentally sustained by any person or persons or on account of damage to property arising out of or in consequence of the performance or nonperformance of the Work as required by the Contract Documents, whether such injuries to persons or damage to property are due or claimed to be due as a result of negligence or willful misconduct of Contractor, its or their subcontractors, employees, agents, or any other person.

1.07 During the performance of the Contract Documents:

A. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship and on-the-job training. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Minnesota State Department of Human Rights and/or other appropriate bodies setting forth the provisions of this non-discrimination clause.

B. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

1.08 The disbursement provisions contained in the Building Loan Agreement and the Disbursement Agreement referred to in the Building Loan Agreement shall control the disbursement of loan funds to Owner. Contractor's application for payment under the Contract Documents shall be, at Contractor's option, either on the MHFA form, attached hereto as **Exhibit B**, or the AIA Form G702, G703, together with forms required by other lenders. With each application for payment, Contractor shall furnish an affidavit listing the number and name of every subcontractor in connection with the Work and of every person furnishing labor or materials therefor, and the amounts due or to become due to such subcontractors, laborers, and persons for Work done and materials furnished as of the date of the current advance, and, if requested by Owner or MHFA, certifying that all subcontractors, laborers and materialmen have been paid to the date covered by the last advance. Owner or MHFA may require Contractor to attach to each request for payment acknowledgements of payment to the date covered by the last advance from all subcontractors and materialmen dealing directly with Contractor, and waivers of lien to the date of the current advance for Work performed by such subcontractors and for which payment is requested. Concurrently with the final application for payment, Contractor shall submit an affidavit listing all subcontractors and materialmen and certifying that there are no liens, claims or demands by subcontractors and materialmen, laborers, other employees or third persons. Contractor also shall furnish waivers or releases of liens from itself and all subcontractors and materialmen for all Work performed and materials furnished hereunder.

1.09 If (i) Contractor, or any officer or director of Contractor, or any stockholder holding 10% or more of the voting stock of Contractor, or any person having directly or indirectly an interest of 10% or more in Contractor, is also a subcontractor or materialman, or an officer or director of a subcontractor or materialman, or stockholder holding 10% or more of the voting stock of the subcontractor or materialman, or has a direct or indirect interest of 10% or more in the subcontractor or materialman; or (ii) Owner, or any partner, officer or director of Owner, or any stockholder holding 10% or more of the voting stock of Owner, or any person having directly or indirectly an interest of 10% or more in Owner, is also a subcontractor or

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material supplier, or an officer or director of a subcontractor or materialman, or stockholder holding 10% or more of the voting stock of the subcontractor or materialman, or has a direct or indirect interest of 10% or more in the subcontractor or materialman, then Contractor and Owner, as applicable, shall disclose in writing to MHFA the identity of such subcontractor or materialman prior to the performance of any Work or furnishing of any material by such subcontractor or materialman. In addition, in the event of such identity of interest, Contractor shall demonstrate to the satisfaction of MHFA, prior to the performance of said Work and furnishing of said materials, that the amount proposed to be charged for said Work or materials is competitive, fair and reasonable, in accordance with the criteria and standards established by MHFA. In the event of a failure of Contractor to so disclose an identity of interest and/or obtain prior approval of the price for such sublet Work or materials, Contractor hereby consents to accept payment for such Work or material at an amount determined in MHFA's sole discretion.

1.10. Contractor will give MHFA prompt written notice of any default by the Owner under the Contract Documents.

1.11 Whenever any approval or notice on behalf of MHFA is required under this MHFA Supplement or whenever any action on behalf of MHFA is required or permitted, the Commissioner of MHFA or his or her successor or designee shall have the power and right to approve, give notice or act on behalf of MHFA.

1.12 This instrument shall be governed by the laws of the State of Minnesota. If any provisions hereof shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions shall not in any way be affected or impaired.

ARTICLE II

HUD RISK-SHARING PROGRAM REQUIREMENTS

2.01. HUD Risk-Sharing Program. The parties hereto agree and acknowledge that MHFA has either already submitted, or may at some time in the future submit, its HUD Risk-Sharing Program Loan made to Borrower in the original principal amount of \$_____ (the "HRS Loan") to the United States Department of Housing and Urban Development ("HUD") for insurance under HUD's Housing Finance Agency Risk-Sharing Program for Insured Affordable Multifamily Project Loans ("HUD Risk-Sharing Program"). HUD is implementing the HUD Risk-Sharing Program in accordance with the authority granted in Section 542(c) of the United States Housing and Community Development Act of 1992 (the "HUD Risk-Sharing Act"), the federal regulations contained in 24 CFR Part 266 (the "HUD Risk-Sharing Rules"), and the procedures set forth in HUD Handbook 4590.01, and any amendments or changes to such act, rules and handbook. If MHFA submits the HRS Loan to HUD for inclusion in its HUD Risk-Sharing Program, and HUD accepts such loan for insurance under such program, then the provisions contained in this Article II shall become effective and remain effective for whatever time period the HRS Loan is included in and insured under the HUD Risk-Sharing Program.

2.02. Starting of Construction. The work to be performed under the Contract Documents shall be started no later than the _____ day of _____, _____.

2.03. Record Keeping. Both Owner and Contractor shall keep accurate records as to the cost of any and all work performed regarding the construction and/or rehabilitation of the Project, whether performed under the Contract Documents or otherwise, and shall make such records available for inspection by either MHFA or HUD, upon the request of either.

2.04 Cost Certification. Contractor shall, upon the completion of the construction and/or rehabilitation work to be performed under the Contract Documents to MHFA's satisfaction, execute and deliver a certificate of actual costs to MHFA, in a form acceptable to MHFA in its sole discretion. If there is an identity of interest between Owner and Contractor, the cost certification must be audited by an independent public accountant in accordance with requirements established by HUD.

2.05. Contract Sum. The Contract Sum shall be equal to the lesser of the amount defined in Article 4 of AIA Document A101 ("Maximum Contract Sum"), or the amount established by way of the certificate of actual costs referred to in and required by Section 2.04 hereof. If the amount disbursed to Contractor, or on its behalf, under Contract Documents exceeds the amount due under this Section 2.05, then Contractor shall return such excess amount jointly to Owner and MHFA.

2.06. Lead-Based Paint. The work to be performed under the Contract Documents shall be performed in accordance and compliance with the lead-based paint provisions and requirements contained in 24 CFR Part 35 for having receiving federal assistance, as such may be amended from time to time.

2.07. Compliance with HUD Risk-Sharing Act, Rules and Handbook. With respect to the work to be performed under the Contract Documents, Owner and Contractor shall both comply with any and all applicable provisions contained in the HUD Risk-Sharing Act, the HUD Risk-Sharing Rules, and HUD Handbook 4590.01.

2.08. Continuance of Provisions. Notwithstanding anything to the contrary contained herein, if any of the provisions or conditions contained in this Article II are also contained in any other Section herein, then such provision shall remain in full force and effect for as long as this this MHFA Supplement remains in force and effect.

***INSERT THE FOLLOWING PARAGRAPH IF APPLICABLE:**

2.09 Compliance with Davis-Bacon Act and Regulations. With respect to the work to be performed under this Construction Contract, Owner and Contractor shall both comply with any and all applicable provisions contained in the Davis-Bacon Act, 40 U.S.C. § 3141- §3148, and the federal regulations promulgated thereunder, including, but not limited to, HUD's Federal

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Labor Standards Provisions, which are attached hereto as **Exhibit C**. Owner and Contractor shall also comply with Form HUD-2554, Supplementary Conditions of the Contract for Construction, which is attached hereto as **Exhibit D**, and the wage compliance schedule for Minnesota, as the same may be updated up to the date of closing (the “Compliance Schedule”), which is attached hereto as **Exhibit E**. The Compliance Schedule takes precedence over any other Davis-Bacon compliance schedule that may be issued from time to time.

(THE REMAINING PORTION OF THIS PAGE IS INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties hereto have executed this MHFA Supplement, or caused it to be executed by their duly authorized officers or partners, as of the date first above written.

OWNER:

a _____

By: _____

a _____

General Partner

By: _____

Its: _____

CONTRACTOR:

a _____

By: _____

Its: _____

EXHIBIT A
PLANS AND SPECS

EXHIBIT B

APPLICATION FOR PAYMENT

EXHIBIT C
FEDERAL LABOR STANDARDS PROVISIONS

Delete if not applicable.

EXHIBIT D

SUPPLEMENTARY CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

Delete if not applicable.

EXHIBIT E
COMPLIANCE SCHEDULE

Delete if not applicable.